

March 28, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E02G0004**

JEFFREY C. LOW, et al
Code Enforcement Appeals

Location: 9909 SW 123rd Place

Appellants: Jeffrey C. Low, *represented by*
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King County: Department of Development and Environmental Services,
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation: Deny appeals
 Department's Final Recommendation: Require applications for permits & restoration of properties affected
 Examiner's Decision: June 14, 2002 Notice and Order is affirmed with modifications

EXAMINER PROCEEDINGS:

Hearing Opened: March 10, 2005
 Hearing Closed: March 14, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
 A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Shoreline protection
- Clearing & grading
- Sensitive areas
- Restoration & mitigation
- Permit requirements
- Penalty limitations

SUMMARY OF DECISION:

Alleged violations of clearing and grading occurred within sensitive areas, and substantial development occurred within area of shoreline jurisdiction, all without application for necessary permits. Applications for permits are required from Appellant Low. Site restoration and/or mitigation of impacts are to be accomplished consistent with DDES action on permit applications and direction to Appellant Low and other owners of affected properties. Civil penalties can be assessed only against the active participants in the violations, Jeffrey C. Low and Kimmco, Inc.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On March 1, 2002, the King County Department of Development and Environmental Services (DDES) issued a “Notice of King County code violation: civil penalty order: abatement order: notice of lien: duty to notify” to Jeffrey C. Low. This notice alleged that work had been performed without required permits on Mr. Low’s property at 9909 Southwest 123rd Place in King County, Washington. On June 14, 2002, the March 1 Notice and Order was superseded by a new notice and order (see finding no. 2).
2. On June 14, 2002, the King County Department of Development and Environmental Services issued a “Notice of King County code violation: civil penalty order: abatement order: notice of lien: duty to notify” (“Notice and Order”) to Jeffrey C. Low, Kimmco, Inc., Douglas F. Aydelotte, Doxie Davis, Barbara Eaton and Douglas Herring, Alex Kaspars, Soussan Afsharfar, Earl Miller, C.M. Nicholson and Eugene A. Smith. The June 14, 2002 Notice and Order is exhibit no. 14 in the hearing record. It alleges that work had been performed without required permits on several properties that are fully described in the Notice and Order. The properties subject to the Notice and Order are adjacent parcels, and include Mr. Low’s property at 9909 Southwest 123rd Place. These parcels are on Vashon Island, and front on Puget Sound as their east boundary.

The persons named in the June 14, 2002 Notice and Order, with the exception of Kimmco, Inc., were the owners of the properties described in the Notice and Order at the time of the alleged violations of the King County code.

Kimmco, Inc. was and is a licensed contractor. Kimmco performed the work that is in issue in this proceeding. The Appellant Jeffrey Low, directly and through Mary Low, employed Kimmco to perform this work.

3. The June 14, 2002 Notice and Order alleged violations of the King County Code, the Revised Code of Washington and the Washington Administrative Code, all as specifically set forth in the Notice and Order. The alleged violations are:
 1. Clearing and grading without a permit;
 2. Clearing and grading within a sensitive area (steep slope and landslide hazard area) without a permit; and
 3. Clearing and grading within a shoreline environment without a shorelines substantial development permit.

The requirements set forth by DDES to bring the properties into compliance with the King County Code were:

1. Stop all activity and barricade the newly graded road;
2. Implement approved erosion sedimentation and drainage control measures; and
3. Apply for and obtain all required permits and approvals (complete applications to be submitted by August 1, 2002).

Requirements “1” and “2,” above, were met by Jeffrey Low and Kimmco, Inc. The complete permit applications described in Requirement “3” have not been submitted pending action on these appeals.

4. Appeals of the June 14, 2002 Notice and Order were filed by Jeffrey Low, Doxie Davis, Soussan Afsharfah, C.M. Nicholson, Alex Kaspars, Eugene A. Smith and Sharon J. Smith, Barbara Eaton and Douglas Herring, Earl T. Miller and Kimmco, Inc.

Upon motion by the Department of Development and Environmental Services, the appeal by Kimmco, Inc. was dismissed.

Upon the Department’s request, the Notice and Order proceedings against Eugene A. Smith and Sharon J. Smith, Earl Miller, Barbara Eaton and Douglas Herring, and Douglas F. Aydelotte were withdrawn.

Petitions by Kimmco, Inc. and Todd and Kathleen Lumiere to participate as intervenors in this proceeding were granted.

5. Properties owned by Douglas Aydelotte, Doxie Davis (subsequently sold to Mr. & Mrs. Mark Johnson), Jeffrey Low, Alex Kaspars, C.M. Nicholson, and Soussan Afsharfah are adjacent waterfront properties on the east shore of Vashon Island. Of these properties, only the Low and Davis properties are currently improved with residences.

Each of these properties contain steep slope and landslide hazard sensitive areas, and have areas within the shoreline jurisdiction. The sensitive areas are regulated by the County’s Sensitive Areas Ordinance, KCC Ch. 21A.24. Areas within the shoreline jurisdiction are regulated by the State Shoreline Management Act, RCW Ch. 90.58, and the County’s Shoreline Management Code, KCC Title 25.

6. In December 2001, the sole existing access to the Low and Davis residences, as well as the Aydelotte, Kaspars, Nicholson and Afsharfah properties, was by way of a 12-foot wide gravel drive that existed, and continues to exist, parallel to the shoreline (hereafter referred to as the “shoreline drive”). This drive is generally authorized by a recorded easement (recording # 6076159). The actual drive, however, deviates somewhat from the recorded easement. This deviation has existed for a substantial period of time, and there is no issue raised in this proceeding with regard to the legal availability of the shoreline drive to serve all of the affected properties.

In December 2001, the sole existing vehicular road connection between the shoreline drive and the public road system was by way of a 24-foot wide easement road that begins at a location south of the Afsharfah property and traverses the hillside in northerly, southerly and westerly directions. This easement road connects with Cunliffe Road Southwest at the top of the steep slope above these properties.

7. Another connection between the public road system and the shoreline drive road previously existed (referred to as the “north access road”). That connection was by way of a 12-foot easement road that connected with the shoreline drive on the Kaspars property, then traversed the hillside in northerly, southerly and westerly directions to connect with the previously described 24-foot wide easement road on the upper portion of the Low property. From that point the access to the public road system was by way of the same 24-foot wide easement road described in

finding no. 6 above. The north access road fell into disuse over a period of at least 15 years. In December 2001 it was unused and overgrown. It was not then reasonably possible for vehicles to travel on the north access road.

8. In 1999 Jeffrey Low was interested in reestablishing the north access road as an alternative route to and from his house. He requested Andrew Syltebo, who did painting and odd jobs for Mr. Low, to explore the condition of the north access road in 1999 and 2000. Mr. Syltebo, using a chainsaw, was able to drive a four-wheel drive SUV part way up the old roadway. He encountered trees that had fallen over the road, mounds of dirt, ditches and small trees and vegetation growing in the roadbed. It took Mr. Syltebo approximately 3 hours to get the vehicle part way up the road, to a point where he was unable to proceed further. The road had not been driven on for many years and was not at that time a functional road.
9. The shoreline frontage of the subject properties is on a crescent-shaped beach, which one witness referred to as a small bay. Prior to enactment of the Shoreline Management Act, a protective wooden bulkhead was built in front of the subject properties. Subsequently, a rock and riprap bulkhead was placed waterward of the wooden bulkhead on the Low, Kaspars and Nicholson properties, and on portions of the Davis and Afsharfar properties. Between 1990 and 2000 the wooden bulkhead disintegrated (except for pilings) along the frontage of the Afsharfar and Nicholson properties. This led to significant erosion of land from the shoreline bank on those properties and also on the Kaspars property. This erosion created and continues to create a long-term threat to the shoreline drive.

On September 12, 2000, the extent of shoreline erosion that had occurred varied from approximately 20 to 35 feet inland from the deteriorated bulkhead line. In December 2001 an unusual storm, in which high tides and southeast winds coincided, eroded approximately 18 to 25 additional feet of the shoreline bank within a single day. This erosion occurred primarily on the Nicholson and Afsharfar properties, and also affected the Kaspars property. Following that event, the distance inland from the deteriorated bulkhead line to the face of the eroded shoreline bank ranged from approximately 45 to 53 feet (as measured on April 22, 2002). On that latter date the east (shoreward) edge of the shoreline drive that provides access to the Low and Davis residences ranged from about 33 feet to 56 feet inland from the shoreline bank.

10. Immediately following the storm in December 2001, Mary Low (Jeffrey Low's Mother, who resided on the subject property) called Mike Kimmel at Kimmco, Inc., to request that he take emergency action to protect the access road. On December 19, 2001 Kimmco provided Mary Low with a proposal to install a rock wall along the bank at the beach line, on a time and materials basis. The proposal provided, "owner to furnish all permit as needed". (Exhibit 82)

Mary Low replied to Mike Kimmel that she needed to discuss the proposal with her son, who was traveling. She subsequently called Mike Kimmel and authorized the work proposed.

11. On December 19, 2001, Kimmco, Inc. began the delivery and placement of "three-man rock" on the beach. The delivery of "three-man rock" to the site continued daily through December 21, with the delivery of approximately 192 tons, and was completed on December 26, with the delivery of an additional 30 ½ tons. A total of 222.87 tons of "three-man rock" was placed on the beach. This rock was placed primarily on the Nicholson and Afsharfar properties to protect the existing shoreline drive, and on the Kaspars property to support and protect a turning area at the intersection of the north access road with the shoreline drive in the vicinity of the boundary between the Kaspars and Nicholson properties. This turning area appears to be approximately the same size as a cleared area that existed in 1968 in this general location, but is substantially

larger than what existed immediately prior to the Kimmco work in December 2001 and January 2002.

12. In December 2001, prior to December 28, Mr. Low discussed with Mike Kimmel, representing Kimmco, Inc., the scope of work for two separate projects that Kimmco was performing or would perform. One was the installation of a rock wall along and in front of the bank at the beach line on Dr. Solovjev's and Mr. Nicholson's lots. (The Solovjev property is now the Kaspars property.) This work was identified by Mr. Low and Kimmco as, "to repair damage". This work on the shore protection fronting the Kaspars and Nicholson lots continued through December 28, 2001.

The second project was identified as, "to reopen the north access road", crossing the Davis, Low and Solovjev (Kaspars') lots. It included "cleaning (clearing?) of bushes and trees, grading and application of gravel." Work to reopen the north access road commenced on December 26, 2001.

13. When Mr. Low subsequently returned to the property in the latter part of December, he directed Kimmco to stop the placement of rock on the properties to the south (Kaspars and Nicholson properties and beyond). Mr. Low states that he was concerned about rocks being placed on other people's properties, and that he was also concerned about the expense. Mr. Low also testified that he thought it would be more feasible to use the old north access road connection to the shoreline drive, rather than continue to protect the shoreline drive for several hundred feet south of the Kaspars property.
14. The placement of rock along the shoreline to protect portions of the subject properties, including the shoreline drive, was entirely within the area of shoreline jurisdiction. No permit for a shoreline substantial development was applied for in connection with this development. No notice was given to DDES by any of the persons named in the Notice and Order that the work was necessary, or had been performed, until DDES was advised by Mr. Kaspars, on or about January 4, 2002, that the work had been done.
15. All of the work to reopen the north access road was done within a steep slope and its buffers and within a landslide hazard area. A portion of this work was also done within the shoreline jurisdiction. No person named in the Notice and Order, or anyone acting on their behalf, applied for a clearing and grading permit, or a shoreline substantial development permit, or a reasonable use exception to the King County Sensitive Areas Ordinance, prior to the commencement of this work. No notice was given to DDES by any of the persons named in the Notice and Order that the work was necessary, or had been performed, until DDES was advised by Mr. Kaspars, on or about January 4, 2002, that the work had been done.
16. King County Code 25.32.010 requires a shoreline substantial development permit for any development within the shorelines of the state, subject to certain limited exceptions. The work described above is not within any of the exceptions established by the King County Code. WAC 173-27-040 provides that if any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project. The burden of proof that a development is exempt from the permit process is on the applicant. WAC 173-27-040 (c) and (d). None of the persons named in the Notice and Order have offered any evidence or argument that the projects that are here in issue are within the scope of any exception or exemption from the Shorelines Management Act or KCC Chapter 25 or KCC 25.32.010, except that the Appellant Jeffrey Low argues that emergency exemptions apply to these shoreline developments pursuant to WAC 173-27-040 (2) (d).

The emergency construction exemption to the requirement for a shoreline substantial development permit defines a qualifying “emergency” as an unanticipated and imminent threat which requires immediate action within a time too short to allow for compliance with the Shorelines Management Act.

17. Mary Low, having experienced the storm of December 2001, and her son, Jeffrey Low, were concerned about the safety of the shoreline drive in the event of similar future events. However, the erosion of the shoreline bank that protects the shoreline drive from the waters of Puget Sound has been occurring over a period of several years. High tides and periodic storms are normal events that cause accelerated erosion when they occur. Mr. Low anticipated the need for or the desirability of re-establishing the north access road more than two years prior to the December 2001 storm.
18. The placement of two-man and larger rock on the beach in front of the Kaspars, Nicholson and Afsharfar properties, for the purpose of protecting the shoreline drive from erosion, was and is a shoreline substantial development. The performance of that work included cutting an access road into the existing bank at the ordinary high water mark. This resulted in erosion onto the beach. Other work was performed within the area of shoreline jurisdiction, associated with reopening the north access road. Uncontrolled drainage and erosion onto the beach resulted. Slash and debris were placed on, or in close proximity to, the beach during the course of this road work. (This slash and debris were then washed into Puget Sound by natural tide and weather actions.) All of these activities were unpermitted and damaged the shoreline environment.
19. The reopening of the north access road was accomplished by clearing and grading land where no road existed immediately prior to the work in issue. The prior existence of a road at the same location, which had fallen into disuse for a number of years, does not provide an exemption from the code requirement for a clearing and grading permit. Even if it did, the location of the project within a sensitive area eliminates the applicability of any of the exemptions in the clearing and grading ordinance.
20. The Appellant Jeffrey Low is a sophisticated and knowledgeable businessman, with past experience in land development. Mike Kimmel, the proprietor and manager of Kimmco, Inc., is an experienced contractor.
21. The Appellants, with the exception of Jeffrey C. Low, had no prior knowledge of, and gave no consent to, the work done upon their properties that are subject to this proceeding. The violations that are the subject of this proceeding were caused solely by work authorized by Jeffrey C. Low and performed by Kimmco, Inc.
22. Construction of the north access road was undertaken without appropriate erosion and drainage controls, and resulted in uncontrolled erosion from the project area into Puget Sound. Slash and debris from the road clearing portion of the project were pushed over the side of the bank on the steep slopes. Best management practices were not followed in the performance of the work.
23. Approximately 69 truckloads of rock were brought onto the subject property for construction of the north access road, adding over 900 tons of rock to the steep slope and landslide hazard area.
24. The re-established north access road generally follows the recorded road easements on the properties that the road traverses, with minor deviations. However, the “turn around” at the

intersection of the north access road and the shoreline drive significantly exceeds the area of the recorded easement on the Kaspars property. To the extent that the “turn around” may also include area south of the Kaspars/Nicholson property line, the new construction also exceeds the area of the recorded easement on the Nicholson property.

25. The Appellant Jeffrey Low and the intervenor Kimmco, Inc. failed to obtain permits that they knew or should have known were required for the work performed. They failed to notify DDES that the work was being performed, or had been performed, pursuant to a claim of an emergency. They failed to perform the work using best management practices. They also failed to take reasonable precautions to protect sensitive areas or the shoreline environment until the issuance of the March 1, 2002 Notice and Order by DDES.

CONCLUSIONS:

1. Violations of the King County Code as alleged in the Notice and Order issued on June 14, 2002, occurred as follows:
 - A. Clearing and grading without permits occurred on the properties subject to this proceeding owned by Jeffrey C. Low, Douglas F. Aydelotte, Mr. & Mrs. Mark Johnson (property formerly owned by Doxie Davis), Alex Kaspars and C.M. Nicholson. The subject clearing and grading was not permitted by any exception to the clearing and grading ordinance.
 - B. Sensitive areas and their buffers, consisting of steep slope hazard areas and landslide hazard areas, were altered on the properties subject to this proceeding owned by Jeffrey C. Low, Douglas F. Aydelotte, Mr. & Mrs. Mark Johnson (property formerly owned by Doxie Davis), and Alex Kaspars. None of the said sensitive area and sensitive area buffer alterations were authorized by any permits issued pursuant to the sensitive areas ordinance.
 - C. Shoreline substantial development occurred without a shoreline substantial development permit on the properties subject to this proceeding owned by Jeffrey C. Low, Mr. & Mrs. Mark Johnson (property formerly owned by Doxie Davis), Alex Kaspars, Soussan Afsharfar and C.M. Nicholson. None of the said development was within any of the exemptions from the requirement for a shoreline substantial development permit pursuant to the Shorelines Management Act, Shorelines Management Regulations, or King County Shorelines Management Code.
2. The rate of past erosion and projected future erosion of the shoreline bank on the Kaspars, Nicholson and Afsharfar properties did not present an imminent threat that precluded compliance with the permit requirements of the Shorelines Management Act. The need for, or desirability of, reopening the north access road to provide an alternative access to the subject properties was anticipated by Jeffrey Low approximately two and one half years prior to the storm event that occurred in December 2001. Therefore, the need to protect the existing shoreline drive and to construct the north access road did not qualify as emergency actions under the Shoreline Management Code.
3. All of the current owners of the properties on which the said violations occurred are “persons responsible for code compliance” pursuant to KCC 23.02.010, as the owners of property where a civil code violation occurred. However, the obligation of all of the appellants, other than Jeffrey Low, is limited by KCC 23.02.130 to bringing the property into a safe and reasonable condition

under the circumstances to achieve code compliance to the extent feasible. No civil fines or penalties can be assessed against the said appellants or their property interests.

4. The violations by Jeffrey Low and Kimmco, Inc. were substantial and caused environmental damage. The Appellant Low and Kimmco, Inc. should be subject to the penalties established by the King County Code, to the extent set forth in the Notice and Order.
5. All work done by Jeffrey Low and Kimmco, Inc. on the subject properties should be either:
 - (1) Wholly or partially restored pursuant to a site restoration permit; or
 - (2) Wholly or partially permitted to remain in place, subject to such conditions and mitigations as the Department of Development and Environmental Services determines to be appropriate under the existing circumstances. Permits shall include clearing and grading, shoreline substantial development and reasonable use exception permits, as deemed necessary by DDES. Those permits should be applied for by Jeffrey Low with respect to all work done upon his parcel and within existing road easements (recorded or prescriptive¹) that exist on the subject properties. Work outside of the Low property and such easements should be performed only to the extent authorized by the property owners upon whose properties the work is to be done, or as required by conclusion 6 below.
6. With respect to properties that are not owned by Jeffrey Low or subject to road easements for his benefit, any site work that the Department of Development and Environmental Services determines to be necessary to bring that property into compliance and into a safe and reasonable condition, to the extent reasonably feasible under the circumstances, shall be performed by those property owners to the extent that they do not authorize Jeffrey Low and his agents to perform the corrective work. A failure to bring those properties into compliance within a reasonable time would authorize DDES to cause the corrective work to be done. The costs incurred by DDES to bring these properties into safe and reasonable condition, as determined by the DDES Director, should then be assessed against the respective properties pursuant to KCC 23.02.130.

DECISION:

The Notice and Order issued by the Department of Development and Environmental Service on June 14, 2002 is affirmed, subject to the following modifications:

1. Except as provided below, the penalties and costs set forth in the Notice and Order shall be assessed only against Jeffrey Low and Kimmco, Inc. No penalties or costs, other than costs of abatement incurred by King County pursuant to Conclusion No. 6, shall be assessed against the other property owners listed in the June 14, 2002 Notice and Order.

The daily penalty for failure to meet requirement number “3” of the Notice and Order shall be imposed commencing with the dates established pursuant to paragraph 2, below (submission of complete applications not later than 30 days after notice by DDES of the requirements for restoration and/or mitigation; and completion of work pursuant to the approved permits within 60 days after DDES permit approval).

¹ The easement rights, if any, of Jeffrey Low over the subject properties are among the issues currently being adjudicated in King County Superior Court, Case No. 02-2-14278-8 SEA.

2. Completed permit applications shall be submitted by Jeffrey Low to perform site restoration and/or mitigation, as required by DDES, on the Low property and on any road easement areas owned or controlled by Jeffrey Low, and on any additional areas authorized by affected property owners. Said applications shall be submitted not later than 30 days after DDES notifies each of the responsible property owners as to the specific requirements, if any, for restoration and/or for mitigation of impacts from the non-permitted activities on their respective properties. The required permits may include Clearing and Grading, Shoreline Substantial Development, Reasonable Use Exception, and other ancillary permits, as determined necessary by DDES to comply with all applicable King County Codes. Jeffrey Low shall have 60 days following action by DDES on his permit applications to complete restoration and/or mitigation work as approved by DDES. (Extensions of time may be granted by DDES, at its discretion, if reasonably necessary to allow for the orderly and safe accomplishment of the required restoration and/or mitigation.)
3. DDES shall advise each of the other responsible property owners as to the specific requirements, if any, for restoration or mitigation of impacts from the non-permitted activities on their respective properties, within 120 days of the date of this decision. (This date may be extended at the discretion of DDES if necessary to allow a reasonable time for DDES to analyze and apply the decision and any orders entered in King County Superior Court Case No. 02-2-14278-8 SEA, and any appeals of that decision.) The affected property owner(s) shall have 180 days after DDES approval of restoration or mitigation plans to complete the restoration or mitigation necessary to bring their property(ies) into a safe and reasonable condition as required by DDES. In the event a responsible property owner fails to do so, DDES may perform the necessary restoration or mitigation, and assess the direct costs thereof against the affected property(ies) and property owner(s).

ORDERED this 28th day of March, 2005.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED by certified mail this 28th day of March, 2005, to the following:

Stephen J. Plowman
Pat Daley
Edward L. Mueller
Soussan Afsharf
Duana Kolouskova
Illeny Maaza

Jeffrey C. Low
Doxie Davis
Alex Kaspars
C.M. Nicholson
KimmCo, Inc.
Todd & Kathleen Lumiere

TRANSMITTED this 28th day of March, 2005, to the following parties and interested persons of record:

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Robert Manns DDES/LUSD Code Enf. Section MS OAK-DE-0100	Randy Sandin DDES/LUSD Site Devel. Services MS OAK-DE-0100	Fred White DDES/LUSD Site Development Services MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MARCH 10 AND MARCH 14, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E02G0004.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Timothy Barnes and Fred White, representing the Department; Stephen J. Plowman representing Jeffrey C. Low, Appellant, Edward L. Mueller representing Alex Kaspers, Appellant, Duana Kolouskova representing Kimmco, Inc., Intervenor, C. M. Nicholson, Appellant, Alex Kaspers, Jeffrey C. Low, Andrew Syltebo and Mike Kimmel. Also present on March 10 were Mr. & Mrs. Mark Johnson (purchasers of the property previously owned by Doxie Davis).

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES Report prepared for November 19, 2002 hearing
- Exhibit No. 2 DDES Witness List
- Exhibit No. 3 GIS Aerial Photograph dated 2000, with boundaries superimposed
- Exhibit No. 4 Additional information from GIS: Mapped sensitive areas
- Exhibit No. 5 Code Enforcement Acknowledgement Form
- Exhibit No. 6 Email from Kathy Newborn to Barbara Porter dated January 23, 2002
- Exhibit No. 7 DDES case notes printed October 29, 2002
- Exhibit No. 8 Violation letter to Mr. Low dated February 1, 2002, with Post Office receipt dated February 5, 2002
- Exhibit No. 9 Letter dated February 27, 2002 to Kathy Newborn from Jeffrey Low
- Exhibit No. 10 Email from Mr. Low to Kathy Newborn dated March 2, 2002
- Exhibit No. 11 DDES permit application notes printed October 25, 2002
- Exhibit No. 12 Notes dated March 7, 2002, prepared by Mr. Low for discussion with DDES
- Exhibit No. 13 Kimmco, Inc. license information
- Exhibit No. 14 GIS land information parcel
- Exhibit No. 15 Assessor's (N&O) information (mailing addresses)
- Exhibit No. 16 Copies of portions of Assessor's maps
- Exhibit No. 17 N&O sent to Mr. Low March 1, 2002 with Post Office receipt
- Exhibit No. 18 Appeal received March 27, 2002 from Mr. Low
- Exhibit No. 19 Notice of pre-hearing conference dated April 18, 2002
- Exhibit No. 20 Notice of Continuance dated May 2, 2002
- Exhibit No. 21 Letter from Alexander Kaspars to Kathy Newborn dated June 4, 2002
- Exhibit No. 22 Letter to Dr. Vsevolod Solovjev from John Sherwood dated January 11, 2002
- Exhibit No. 23 Memo from Fred White to Stan Titus
- Exhibit No. 24 Correspondence from Kathy Newborn to all Parties Involved, with N&O issued June 14, 2002
- Exhibit No. 25 Appeal by Kimmco, Inc. dated July 1, 2002
- Exhibit No. 26 Appeal from Doxie Davis dated July 1, 2002, with attached letter from Jeff Low dated February 4, 2002
- Exhibit No. 27 Appeal from Alex Kaspars dated July 1, 2002
- Exhibit No. 28 Appeal from Soussan Afsharfar dated June 29, 2002, with map of area
- Exhibit No. 29 Amended appeal from Mr. Low dated June 24, 2002
- Exhibit No. 30 Appeal from Doxie Davis dated July 1, 2002
- Exhibit No. 31 Appeal from Mr. Low dated June 24, 2002
- Exhibit No. 32 Appeal from Eaton & Herring
- Exhibit No. 33 Appeal from Mr. Nicholson dated May 17, 2002
- Exhibit No. 34 Appeal from Eugene A. Smith dated June 19, 2002
- Exhibit No. 35 Emails from Doxie Davis to Kathy Newborn dated June 24, 2002 & June 25, 2002
- Exhibit No. 36 Second Notice of Continuance dated July 1, 2002
- Exhibit No. 37 Statement by DDES, prepared at Examiner's request, dated July 18, 2002
- Exhibit No. 38 Notice of Second Pre-Hearing Conference dated July 22, 2002
- Exhibit No. 39 Notice of Additional Hearing Date Availability dated July 25, 2002
- Exhibit No. 40 Revised Notice of Additional Hearing Date Availability dated July 26, 2002
- Exhibit No. 41 Notice of Pre-Hearing Conference dated August 8, 2002
- Exhibit No. 42 Pre-Hearing order dated September 5, 2002 and Notice of Pre-Hearing Conference dated September 5, 2002
- Exhibit No. 43 Memorandum from Kathy Newborn to the Hearing Examiner dated September 17, 2002
- Exhibit No. 44 Request for documents to Bob Johns from Tim Barnes dated September 30, 2002

- Exhibit No. 45 Notice of Appearance by Tim Barnes, King County Deputy Prosecuting Attorney's Office
- Exhibit No. 46 Email from Examiner Stan Titus dated September 23, 2002 and motion to intervene by Todd & Kathleen Lumiere
- Exhibit No. 47 Motion to Intervene by Kimmco, Inc.
- Exhibit No. 48 Order on Motion to Intervene; Notice of Intention to Grant Intervenor dated September 26, 2002
- Exhibit No. 49 Two photos (2) taken September 6, 2002 by Kathy Newborn
- Exhibit No. 50 Photos (34) taken September 6, 2002
- Exhibit No. 51 Photos (15) taken by K. Newborn on May 10, 2002
- Exhibit No. 52 Photos (11) of existing road taken by K. Newborn May 10, 2002
- Exhibit No. 53 Photos (12) taken by K. Newborn February 1, 2002
- Exhibit No. 54 Photos (26) taken by K. Newborn January 30, 2002
- Exhibit No. 55 Photos (7) attached to Doxie Davis' appeal statement
- Exhibit No. 56 1977 aerial photo
- Exhibit No. 57 1990 aerial photo
- Exhibit No. 58 1980 aerial photo
- Exhibit No. 59 1936 aerial photo
- Exhibit No. 60 Map provided by Mr. Low to Kathy Newborn
- Exhibit No. 61 Presumption of salmonids rule
- Exhibit No. 62 Rock Removal Site Plan by American Engineering Corp. (2 sheets)
- Exhibit No. 63 Road Easement Survey by Group Four, Inc. dated January 25, 2002, submitted to DDES as part of permit application L04CG024
- Exhibit No. 64 Letter submitted to DDES by Mark Johnson (purchaser of the Doxie Davis property) with
Letters from Williams Heating, Inc. and Heights Water
- Exhibit No. 65 February 10, 2004 permit applications by Jeffrey C. Low, with attachments, for Shoreline restoration and access road grading and surfacing, nos. L04CG024 and L04CG023
- Exhibit No. 66 February 9, 2005 Addendum to DDES staff report
- Exhibit No. 67 Notice of Violation dated June 14, 2002
- Exhibit No. 68 Mr. Low's Appeal
- Exhibit No. 69 Low Application Affidavit and worksheet dated January 29, 2004
- Exhibit No. 70 Reduced copy of 2004 survey done by Group 4, Inc.
- Exhibit No. 71 Reduced black and white copy of Rock Removal Site Plan
- Exhibit No. 72 Title Insurance commitment dated December 29, 1998
- Exhibit No. 73 Geospectrum Consultants, Inc. Letter Report dated May 31, 2002
- Exhibit No. 74 Geospectrum Consultants, Inc. Letter Report dated May 1, 2002
- Exhibit No. 75 Geospectrum Consultants, Inc. Letter Report dated February 4, 2004 (actual date: February 4, 2004)
- Exhibit No. 76 Kimmco, Inc. Invoices, Receipts and supporting documents
- Exhibit No. 77 Letters from Dana Winge, Glenn A. Edwards & Andrew Syltebo, Re: prior use of access road
- Exhibit No. 78 Series of Photographs taken September 28, 2002, February 20, 2002 and 1967-68
- Exhibit No. 79 Title Report from Ticor Title Company dated February 18, 2005
- Exhibit No. 80 Motion by Jeff Low to Amend Complaint, Add Defendants & Add Prescriptive Easement
Claims with supporting declarations
- Exhibit No. 81 Jeff Low Access Road Maintenance, Grading & Drainage Plans
- Exhibit No. 82 Kimmco, Inc. Proposal dated December 19, 2001
- Exhibit No. 83 Mr. Low's Letter dated December 28, 2001 to Mike Kimmel

- Exhibit No. 84 Summary by Alexander Kaspars of Kimmco, Inc. Load Tickets for 3 Man Rock
- Exhibit No. 85 Summary by Alexander Kaspars of Kimmco, Inc. Load Tickets, listed by product
- Exhibit No. 86 1978 Aerial Photo showing pencil markings of roads
- Exhibit No. 87 Aerial Photo dated 2000, with outline of portion of Kaspars property
- Exhibit No. 88 Same as exhibit 87, in color

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